

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

Town of Bel Air
39 N. Hickory Avenue
Bel Air, Maryland 21014

Respondent.

Proceeding Under Section 309(a) of the
Clean Water Act, 33 U.S.C. § 1319(a)

Docket No. CWA-03-2016-0148DN

ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT

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I. STATUTORY AND REGULATORY AUTHORITY

1. The following Findings of Violation and Order for Compliance ("Order") are issued under the authority vested in the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "the Act"). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has redelegated it to the Director of the Water Protection Division of EPA Region III.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the applicable Permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that the Administrator may authorize a state to issue an NPDES permit.

5. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits on September 5, 1974, and to issue general NPDES permits in 1991.

6. MDE issued NPDES "General Permit for Discharges from Small Municipal Separate Storm Sewers," General Discharge Permit No. 03-IM-5500; General NPDES Permit No. MDR 055500 (hereinafter, "the MS4 Permit"), effective April 14, 2003.

7. The MS4 Permit was scheduled by its terms to expire on April 14, 2008 but has been administratively extended by MDE.

8. MDE issued NPDES "General Permit for Discharges from Stormwater Associated with Industrial Activities," General Discharge Permit No. 12-SW; General NPDES Permit No. MDR 0000 (hereinafter, "the Industrial Permit") effective January 1, 2014.

9. The Industrial Permit is scheduled by its terms to expire on December 31, 2018.

10. Pursuant to Section 402(i) of the CWA, 33 U.S.C. §1342(i), EPA retains its authority to take enforcement action within the State of Maryland for NPDES permit violations.

11. At all times relevant to this CAFO, Respondent owned and/or operated a municipal separate storm sewer system (MS4) as that term is defined in 40 C.F.R. § 122.26(b)(8) (hereinafter, "Bel Air MS4").

12. The Bel Air MS4 is located within Harford County, Maryland.

13. The Bel Air MS4 is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).

14. The Bel Air MS4 discharges stormwater to Winters Run, Bynum Run and their associated tributaries, which discharge to the Chesapeake Bay, a "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

15. Bel Air's initial coverage for its MS4 discharges under the MS4 Permit was first effective on June 5, 2003, and its discharges have been covered by the MS4 Permit through an administrative extension since its expiration on April 14, 2008.

16. On January 14-15, 2014, EPA representatives performed an inspection of the Bel Air MS4 (hereinafter, "EPA Inspection") during which such representatives observed multiple violations of the MS4 and Industrial Permits as described in Section IV below.

17. Respondent admits the Findings of Fact and Conclusions of Law set forth herein.

III. VIOLATIONS

Count I

Failure to Implement Illicit Discharge Detection and Elimination Program

18. Section III.C of the MS4 Permit requires Bel Air to develop a program to implement illicit discharge detection and elimination, including field-screening of outfalls and inspection procedures.

19. The EPA Inspection revealed that, at the time of the inspection, Bel Air had failed to develop a program to implement illicit discharge detection and elimination, including field-screening of outfalls and inspection procedures.

20. Bel Air's failure to develop a program to implement illicit discharge detection and elimination constitutes a violation of the Section III.C of the MS4 Permit and Section 402 of the Act, 33 U.S.C. § 1342.

Count II

Failure to Develop a Stormwater Pollution Prevention Plan

21. Section III.F of the MS4 Permit and Section III.C of the Industrial Permit require Bel Air to develop a stormwater pollution prevention plan (SWPPP) for industrial facilities.

22. The EPA inspection revealed that, at the time of the inspection, Bel Air had failed develop a SWPPP for its DPW Maintenance Facility, which had coverage under the Industrial Permit.

23. Respondent's failure to develop a SWPPP for its DPW Maintenance Facility constitutes violations of Section III.F of the MS4 Permit, Section III.C of the Industrial Permit, and Section 402 of the Act, 33 U.S.C. § 1342.

Count III

Failure to Submit Annual Reports/Deficient Annual Reports

24. Section V.C of the MS4 Permit requires Bel Air to submit annual reports regarding its MS4 operations, including certain required information, to MDE.

25. The EPA inspection revealed that Bel Air had failed to submit annual reports regarding its MS4 operations to MDE for reporting years 2012 and 2013, and to include certain required information in its annual report for reporting year 2014.

26. Respondent's failure to submit annual reports regarding its MS4 operations to MDE for reporting years 2012 and 2013, and to include certain required information in its annual report for reporting year 2014 constitute violations of Section V.C of the MS4 Permit and Section 402 of the Act, 33 U.S.C. § 1342.

IV. ORDER

AND NOW, this 29th day of September, 2016, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), and does consent to do the following:

27. No later than September 30, 2017, complete a map showing the extent of the storm drain system, including all outfalls, inlets, pipes, and manholes, as well as both public and private post-construction best management practices, and describe a plan for continually updating said map.

28. No later than September 30, 2016, develop written procedures to field screen storm drain outfalls on a consistent basis so that all outfalls are screened every five years or more frequently. In developing these procedures, Respondent shall give priority to areas with a higher likelihood of illicit discharges, illicit connections and/or or illegal dumping, such as older infrastructure, a concentration of high-risk activities, and/or past history of water pollution problems.

29. No later than September 30, 2017, submit to EPA certification that it is in compliance with the following requirements:

- a. Long-term continuation of SWPPP trainings and inspections;
- b. Maintenance of records as required by the MS4 permit;
- c. Annual submission of reports as required by the MS4 permit, including submission of its annual report for reporting year 2015; and
- d. Compliance with all provisions of the Municipal and Industrial Permits, including maintaining Industrial Permit coverage for its DPW Maintenance Facility.

30. Submit the certification required by Paragraph 29 herein to:

Andrew Dinsmore
Water Protection Division (3WP42)
USEPA Region III
1650 Arch Street
Philadelphia, PA 19103

V. GENERAL PROVISIONS

31. This Order does not relieve Respondent of any obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This Order does not constitute a waiver, suspension or modification of the requirements of the CWA or of any issued permit.

32. Issuance of this Order shall not be deemed an election by the EPA to forego any administrative, civil or criminal action to seek penalties, fines or any other relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited herein. This Order shall not prohibit, prevent, or otherwise preclude EPA from whatever action it deems appropriate to enforce the Act in any matter and shall not prohibit, prevent, or otherwise preclude EPA from using this Order in subsequent administrative or judicial proceeding.

33. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and it waives its right to contest all of the allegations contained herein, and it further consents to issuance of this Order without adjudication or administrative review, including but not limited to the right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

34. EPA reserves all existing inspection authority otherwise available to the Agency pursuant to section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute, law, regulation or ordinance.

35. The undersigned representative of Respondent certifies that s/he is fully authorized by the party represented to enter into the terms and conditions of this Order and to execute and legally bind said party.

36. All of the terms and conditions of this Order together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this Order, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the EPA Regional Administrator or his designee, then the entire Order shall be null and void.

37. EPA and its authorized representatives, including contractors, shall have authority upon the presentation of proper identification to enter facilities owned or operated by Respondent at any time without prior notification to monitor the activities required by this Order, verify any data or information submitted pursuant to this Order, obtain samples, and inspect and review any records generated and/or maintained pursuant to this Order. EPA reserves and does not waive all existing inspection and information request authority.

38. Violation of any term of this Administrative Order may subject Respondent to a civil penalty of up to \$37,500 per day of violation under Section 309 of the CWA, 33 U.S.C. § 1319.

39. Respondent shall not raise lack of funds as a defense to compliance with the requirements of this Order. Nothing in this Order shall require the Respondents to violate the Anti-Deficiency Act, 13 U.S.C. § 1341.

VI. TERMINATION AND SATISFACTION

40. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that it has demonstrated, to the satisfaction of EPA, the terms of this Order have been satisfactorily completed.

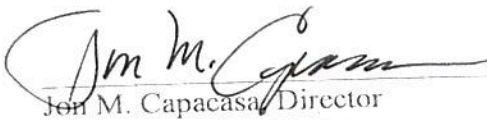
VII. EFFECTIVE DATE

41. This Order shall become effective on the date on which it is filed with the Regional Hearing Clerk after the signature of the Director, EPA Region III Water Protection Division.

VIII. FINAL ORDER

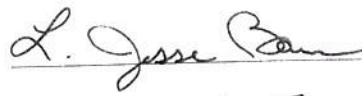
SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22, this

29TH day of SEPTEMBER, 2016.


Jon M. Capacasa, Director
Water Protection Division

FOR RESPONDENT:

Date: July 27, 2016


Name and Title: L. Jesse Bane, Town Administrator
Town of Bel Air, Maryland